SINGLE BENCH

CF 4002 (6)

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR (C.G.)

(Service Matter)

Writ Petition No. 5053 **/2006**

(5)

PETITIONERS 1. Shankarlal Patel S/o Ganesh RaM aged 32 years (M.A. English M.A. Geography B.Ed. Trained N.C.C.-B Grade) Resident of and employee in Dr. Bhim Rao Ambedkar Govt. Higher Secondary School Adil Block Malkharoda District –Janjgir Champa (C.G.).

P.R. No. 5068/06 Presented by Shri C.R. Sahu dated 12/9/06

RECEIVED-COPY 12/9/06 CLERK to A. G. BILASPUR

2. Chudamani Sahu S/o Bhagat Ram (M.A.) aged 35 years Lecturer Resident of and employee in Dr. Bhim Rao Ambedkar Govt. Higher Secondary School Adil Block Malkharoda District –Janjgir Champa (C.G.).

OATH COMMISSIONER APARNA MALVIYA CG-07-346/2006 Bilaspur Chhattisgarh

3. Dilchand Bhardwaj S/o R.C.

(7)

Bhardwaj (M.Sc..) aged 30 years Lecturer Resident of and employee in Dr. Bhim Rao Ambedkar Govt. Higher Secondary School Adil Block Malkharoda District –Janjgir Champa (C.G.).

4. Vishwa Vijay Verma S/o Goverdhan Prasad aged 28 years Lecturer (M.A. and B.Sc.) Resident of and employee in Dr. Bhim Rao Ambedkar Govt. Higher Secondary School Adil Block Malkharoda District –Janjgir Champa (C.G.).

OATH COMMISSIONER APARNA MALVIYA CG-2073/96 Bilaspur Chhattisgarh

VERSUS

RESPONDENTS 1. The State Of Chhattisgarh through the Secretary Education (School) Department D.K. Bhawan Mantralaya Raipur Distt . Raipur

(8)

2. The Collector Janjgir Champa Distt. Janjgir (Champa)

3. The District Education Officer at and Janjgir Champa Distt. Janjgir (Champa) .

4. The Chief Executive officer Janpad Panchayat malkharoda tahsil malkharoda Distt. Janjgir Champa .

5. The President Janpad Panchayat malkharoda Tahsil malkharoda Distt. Janjgir Champa (C.G.)

OATH COMMISSIONER APARNA MALVIYA CG-2073/96 Bilaspur Chhattisgarh

6. The Principal Govt.Higher Secondary School Adil in the Block and Tahsil Malkharoda Distt-Janjgir (Champa C.G.)

7. The Sarpanch Gram Panchayat Adil Block and Tahsil Malkharoda Distt- Janjgir (Champa C.G.)

8. The president janbhagidari samiti Govt.Higher Secondary School Adil Block and Tahsil Malkharoda Distt- Janjgir (Champa C.G.) .

9. The Block Education Officer Malkharoda Distt. Jajgir Champa .

10 The District Panchayat Janjgir Champa Tharough the President of the District Panchayat (Janjgir).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA. FOR ISSUE OF CERCIORARY MANDAMUS, PHOHIBITION ETC. OR ANY APPOPRITE WRIT DIRECTION OR ORDER

AFR

14.9.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

W. P. (S) No. 5053 of 2006

Petitioners : Shankarlal Patel & others

Versus

Respondents : The State of Chhattisgarh & others

Shri J.R. Verma, counsel for the petitioners.

Smt. Anju Ahuja, Deputy Govt. Advocate for respondents No. 1, 2, 3, 6, 9 & 10.

ORDER

(Passed on 14th September, 2006)

1. This is a case where petitioners are seeking continuation and permanency in service beyond a period of 4 years, for which they were appointed.

2. The facts in nutshell are that the petitioners were initially appointed as lecturers/teachers in the school run by Janbhagidari Samiti and Panchayat Adil, Block Malkharoda, District Janjgir Champa.

3. On upgradation of the school to higher secondary school, the petitioners were permitted to continue on the same salary

fixed by the Panchayat and Janbhagidari Samiti by order dated 25.7.2002 (Annexure P/1), with a condition that concerned school would make arrangement for their school building and payment of salary to the teachers.

4. The appointment of the petitioners on the said posts were extended for subsequent academic sessions 2004-05 and 2005-06 in the up-gradated Dr. Bhim Rao Ambedkar Govt. Higher Secondary School, Gram Panchayat, Adil, Block Malkharoda, District Janjgir Champa by order dated 30.7.2004 in case of petitioner no. 1 and by order dated 8.7.2004 in case of other petitioners (Annexure P/3).

5. The petitioners have filed this petition praying that the respondents/State and Panchayat be directed to grant higher salary as per payment made to regularly appointed lecturers/teachers by the Government and further services of the petitioners be regularized with grant of regular pay scale.

6. Shri J.R. Verma, learned counsel appearing for the petitioners would submit that admittedly, the appointment of the petitioner was initially for a period of two academic sessions thereafter, it was further extended for two more academic

sessions up to academic sessions 2005-2006. The petitioners are entitled to grant of pay scale at par with regularly appointed lecturers/teachers by the Government and the petitioners have further acquired right to regularization with regular pay scale.

7. Having heard the learned counsel for the petitioners and having perused the pleadings and records appended to the petitioners, it is evident that the appointment of the petitioners was not in accordance with law, consistent with the scheme for public employment and after proper invitation and competition among the qualified persons. Thus, the petitioners have no right to regularization/permanency or pay scale at par with other lectures/teachers appointed on regular basis.

8. The Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others Vs. Umadevi (3) and others[1] observed in para 28 as under:-

> "28. In Director, Institute of Management Development, U.P. v. Pushpa Srivastava[15] this Court held that since the appointment was on purely contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and

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to claim regularization in service in the absence of any rule providing for regularization after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the calendar year concerned was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee."

9. Further, it was observed in paras 43 and 44 as under:-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is

discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would no be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not

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interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment."……

10. With regard to grant of regular pay scale, the Hon'ble Supreme Court in the case of M.P. State Textile Corporation Ltd. v. Mahendra and others[2] observed in para 5 as under:-

"……..We think that the respondent workmen who have accepted their employment on a contract, the terms of which specified the pay scale of each of these workmen,

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cannot claim the pay scale of the appellant Corporation when their services were retrenched by Indore Textile, Ujjain."……

11. The Hon'ble Supreme Court further in the case of National Fertilizers Ltd. and others v. Somvir Singh[3] observed in para 26 as under:-

> "26. It is true that the respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the respondents have worked for some time, the same by itself would not be a ground for directing regularization of their services in view of the decision of this Court in Umadevi (3)[1]."

12. For the reasons aforementioned, the petitioners have no right to regularization and also they are not entitled to grant of higher regular pay scale for any period. Thus, this writ petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

1. {(2006) 4 SCC 1}
2. {(2005) 10 SCC 675}
3. {(2006) 5 SCC 493}
15. {(1992) 4 SCC 33}